

Amendments to the Drawings

None

Remarks

Applicant thanks the Examiner for the Written Office Action.

With regard to the substantive portion of the Written Office Action, Claims 1-20 were rejected under 35 U.S.C. 103(a) as being unpatentable over Cooperstone et al. in view of Chao.

In response to the Written Office Action, the Applicant respectfully presents the following arguments.

35 U.S.C. 103(a)

In response to rejected Claims 1-20, the Applicant respectfully submits that Claims 1-20, as previously presented, are patentable under 35 U.S.C. § 103(a) over Cooperstone et al. in view of Chao. In particular, it is believed that the combination of Cooperstone et al. and Chao does not contain all the limitations of the claims. The PTO has the burden to establish a *prima facie* case of obviousness. (*In re Fine*, 837 F.2d, 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988); MPEP '2142). “To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art.” (MPEP §2143.03).

As previously presented, independent Claims 1 and 14 each include the limitation, “a wellness component under the direction of the parent management company to provide a preventative care and wellness education service to the association health component.” However, neither Cooperstone et al. nor Chao disclose a wellness component under the direction of the parent company configured to provide wellness management services and programs. Chao discloses a “Catastrophic Outliers, Special Populations, Chronically ill, Acutely ill, and Well Population.” [Figure 5, Para 0084] However, this is not the same as

a wellness component under the direction of the parent management company because Chao describes only levels of wellness, wherein the Applicant defines a “wellness component provides preventative care and wellness education to the AHC. The wellness component may provide traditional wellness services such as immunizations. In a certain embodiment, the wellness component also provides non-traditional wellness services such as aroma-therapy and massage therapy.” [Para 0020] Chao doesn’t suggest or disclose such elements incorporated within a wellness component under the direction of a parent management company. Therefore, the Applicant respectfully submits that the references cited do not actually disclose the limitations of the present application.

In addition, the Applicant respectfully submits that independent Claims 1 and 14 each include the limitation “a risk management component providing a risk management service to the association health component under the direction of the parent management company.” However, neither Cooperstone et al. nor Chao disclose a risk management component under the direction of the parent management company configured to provide risk management services and programs. Chao discloses a “risk management unit addresses risk of caring for patient populations by establishing plan, network, and formulary designs that are presented to sponsors. Risk is controlled by presenting the participants with appropriate plan design during the enrollment process. The income plan design of the preferred embodiment, which bases a participant’s co-payment upon the participant’s ability to pay, lowers plan risk by providing affordable healthcare to the participants.”

The Applicant defines a “risk management component may provide risk reduction training and a risk reduction program to the AHC members.” [Para 0021] The

Applicant's invention includes a financial services component configured to support the risk of covering the participant as disclosed by Chao. In addition, the Applicant respectfully notes that according to the present application, "The financial services component provides financial services to the association health plan company under the direction of the parent management company. The financial services component may support underwriting health care services." [Para 0021]

In addition, neither Cooperstone et al. nor Chao disclose a reasoning to combine a wellness component and a risk management component to an association health component under the direction of the parent management company to provide additional service and programs to the members, as instructed by the Applicant. It would not have been obvious to one with ordinary skill in the art at the time the invention was made to include a system comprising a wellness component under the direction of the parent management company to provide a preventative care and wellness education service to the association health component and a risk management component providing a risk management service to the association health component under the direction of the parent company as taught by Chao, within the system of Cooperstone et al., with the motivation of providing an affordable health care plan to participants, who are members of an organization, such as a business; because the wellness component and the risk management component described in Chao do not provide the same benefits as described by the Applicant. Therefore, the Applicant respectfully submits that the Examiner has not established a *prima facie* case of obviousness.

Furthermore, the Applicant respectfully submits that claims 1-20, as previously presented, are patentable under 35 U.S.C. § 103(a) over Cooperston et al. in view of

Chao. In particular, the Applicant believes that the reason given by the Examiner in the Written Office Action to combine the elements of Cooperstone et al. and Chao to make the claimed invention is impermissible hindsight; because Chao does not disclose a wellness component under the direction of a parent management company, configured to provide traditional wellness services such as immunizations; or also provide non-traditional wellness services such as aroma-therapy and massage therapy. In addition, Chao does not disclose a risk management component under the direction of a parent management company, configured to provide risk management services and programs. Therefore, the components of Chao combined with the system of Cooperstone et al. would not present the same elements and features as described by the Applicant. According to the Court's recent decision in *KSR Int'l Co. v. Teleflex Inc.*, No. 04-1350, 14 (U.S. Apr. 30, 2007), in formulating a rejection under 35 U.S.C. § 103(a) there must be "an apparent reason to combine the know elements in the fashion claimed by the patent at issue." (*Id.*) In addition, "this analysis should be made explicit." (*Id.*)

However, it is well settled that hindsight is not a proper basis for rejecting the claims. *Heidelberger Druckmaschinen AG v. Hantscho Commercial Products, Inc.* 30 U.S.P.Q.2d 1377 (Fed. Cir. 1993). Furthermore, "[o]ne cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention." *In re Fritch*, 23 U.S.P.Q.2d 1780, 1784 (Fed. Cir. 1992). Therefore, a reason provided by an Examiner to combine elements of prior art to make the claimed invention cannot be based on impermissible hindsight.

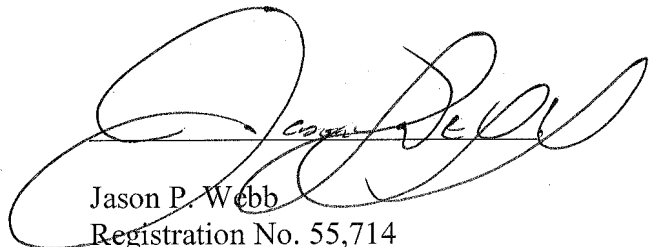
In this instance, the written office action states motivation to provide an affordable health care plan to participants, who are members of an organization such as a

business, as the reason to combine the system with a wellness and a risk management component under the direction of a parent management company;. This “reasoning” is flawed because the health system as described by Cooperstone et al. with a wellness component and a risk management component described by Chao does not provide the same benefits as described by the Applicant. Specifically, Chao does not a wellness component nor a risk management component described by the Applicant configured to provide additional service and programs to the members. Furthermore, neither Cooperstone et al. nor Chao disclose a reasoning to combine a wellness component and a risk management component to an association health component under the direction of the parent management company to provide additional service and programs to the members. Therefore, the Applicant believes that the reason to combine the references is impermissible hindsight, as the advantages and benefits of the combination is disclosed by the Applicant. Accordingly, the reason given by the Examiner for the combination is impermissible hindsight. As a result, the Examiner did not explicitly identify a reason as to why a person of ordinary skill in the art would have combined the prior art elements in the manner claimed. Therefore, Applicant respectfully submits that claims 1-20, as previously presented, are patentable under 35 U.S.C. § 103(a). The Applicant respectfully requests that the rejections be withdrawn.

Conclusion

For these reasons, it is believed that none of the prior art teaches the claimed invention. Furthermore, it is believed that the foregoing amendment has adequate support in the specification, and accordingly there should be no new matter. Applicant believes the pending claims have addressed each of the issues pointed out by the Examiner in the Office Action. In light of the foregoing amendment, the claims should be in a condition for allowance. Should the Examiner wish to discuss any of the proposed changes, Applicant again invites the Examiner to do so by telephone conference.

Respectfully Submitted,



Jason P. Webb
Registration No. 55,714
Attorney for Applicant

Date: September 15, 2008

Advantia Law Group
9035 South 1300 East
Suite 200
Sandy, Utah 84094
Telephone: 801/272-8368